

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LINDA MIGLIORI, FRANCIS J. FOX,
RICHARD E. RICHARDS, KENNETH
RINGER, and SERGIO RIVAS,

Plaintiffs,

and

ZACHARY COHEN,

Intervenor- Plaintiff,

v.

LEHIGH COUNTY BOARD OF ELECTIONS,

Defendant,

and

DAVID RITTER,

Intervenor-Defendant.

No. 5:22-cv-00397

LETTER BRIEF ON BEHALF OF THE LEHIGH COUNTY BOARD OF ELECTIONS

On March 4, 2025, this Court issued an Order that directed the parties to submit evidence of the Allentown market rates for civil rights attorneys, as well as supporting letter briefs, within 10 days of the date of the Order. This Court subsequently granted the Lehigh County Board of Elections (“Board”) request for an extension of time, making the new deadline March 24, 2025.

For the reasons set forth in greater detail in the accompanying affidavit, and considering that the instant litigation was commenced by the American Civil Liberties Union (“ACLU”) on behalf of five individually named Plaintiffs, the Board suggests that the Allentown market rates for the civil rights attorneys be set as follows: (1) Attorneys Witold Walczak and Marian

Schneider, \$375 per hour; (2) Attorneys Stephen A. Loney, Jr. and Richard T. Ting, \$250 per hour; and (3) Attorney Connor P. Hayes, \$175 per hour.

The Board's request for a reduction in the fees sought by the ACLU attorneys is premised upon undersigned counsel's qualifications, experience, and background, relevant case law in fee petition cases, undersigned counsel's personal knowledge of the rates he has charged private clients in civil rights litigation, undersigned counsel's personal knowledge of the approximate hourly rate he received for litigating the underlying merits of this matter on behalf of the Board, and the lack of production of a fee agreement between the ACLU and its clients in this case.

The Board also wishes to emphasize that, although the Honorable Joseph F. Leeson issued an Opinion and Order in April 2023 this matter in which he determined that Plaintiffs/the ACLU were entitled to an award of attorney fees generally as the "prevailing parties," the Board believes there has been an intervening change in the law since the issuance of Judge Leeson's Opinion and Order.

Specifically, on February 25, 2025, the United States Supreme Court issued its Opinion in *Lackey v. Stinnie*, ____ U.S. ____, 145 S. Ct. 659 (2025) in which it held that the plaintiffs—who obtained only preliminary injunctive relief before the action became moot—did not qualify as "prevailing parties" eligible for attorney fees under Section 1988(b) because no court conclusively resolved their claims by granting enduring judicial relief on the merits that materially altered the legal relationship between the parties.

Here, based upon the U.S. Supreme Court's Opinion in *Lackey*, Plaintiffs should not be considered prevailing parties entitled to an award of attorneys' fees as a matter of law. The temporary relief obtained by Plaintiffs before the Third Circuit—the only Court to grant relief, which was later nullified by an Order of the Supreme Court vacating that determination—was not sufficiently enduring to qualify Plaintiffs as prevailing parties. Therefore, considering *Lackey*, the

Board respectfully requests this Honorable Court reexamine, and ultimately overturn the District Court's determination that the ACLU be awarded attorney fees as "prevailing parties" here.

As a final point, the Board wishes to incorporate by reference the arguments raised in its Supplemental Brief in Opposition to Petition for Attorney's Fees filed May 8, 2023 regarding the unreasonableness of the fees and hours spent by Plaintiffs/the ACLU's Counsel in litigating this matter. *See* ECF No. 77 at 1-8.

Respectfully Submitted,

DATED: March 24, 2025

REPKA MAZIN LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Letter Brief filed was served on all parties of record via the Court's CM/ECF system on the date set forth below.

DATED: March 24, 2025

By: Joshua S. Mazin
Joshua S. Mazin, Esq.